INDEX

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutes and Regulations Involved	2
Statement	2
Argument	4
Conclusion	8
Appendix	9

CITATIONS

Cases:	
Cammarano v. *United States*, 358 U.S. 498	5
Comstock v. *Group of Investors*, 335 U.S. 211	5
Corn Products Co. v. *Commissioner*, 350 U.S. 46	5
Dulles v. *Johnson*, 273 F. 2d 362, certiorari denied, 364 U.S. 834	6, 7
League of Women Voters of U.S. v. *United States*, 180 F. Supp. 379, certiorari denied, 364 U.S. 822	6, 7
Seasongood v. *Commissioner*, 227 F. 2d 907	6, 7
Slee v. *Commissioner*, 42 F. 2d 184	5
Statutes:	
Internal Revenue Code of 1954:	
Sec. 170 (26 U.S.C. 1958 ed., Sec. 170)	2, 9
Sec. 170(a) (26 U.S.C., 1958 ed., Sec. 170(a))	4, 9
Sec. 170(c) (26 U.S.C., 1958 ed., Sec. 170(c))	4, 8, 9, 10
Sec. 501 (26 U.S.C., 1958 ed., Sec. 501)	10
Miscellaneous:	
Treasury Regulations on Income Tax:	
Sec. 1.170–1 (26 C.F.R., Sec. 1.170–1)	10, 11
Sec. 1.501(c)(3)–1 (26 C.F.R., Sec. 1.501(c)(3)–1)	6, 7, 8, 11, 12, 13

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 462

ALAN B. KUPER AND VIRGINIA A. KUPER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (Pet. A1–A17) are not officially reported. The opinion of the Court of Appeals (Pet. A18–A19) is reported at 332 F. 2d 562.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 1964. (Pet. 2.) The petition for a writ of certiorari was filed on September 8, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the record warrants the conclusion of the two courts below that a substantial part of the activities of the Millburn League of Women Voters consisted of attempting to influence legislation, so that a contribution to it by the taxpayers could not qualify for deduction under Section 170 of the Internal Revenue Code of 1954.

STATUTES AND REGULATIONS INVOLVED

Sections 170 (a) and (c) and 501 (a) and (c) of the Internal Revenue Code of 1954 and Sections 1.170–1 and 1.501(c)(3)–1 of the Treasury Regulations on Income Tax (1954 Code) are set forth, in relevant part, in the Appendix, pp. 9–13 (*infra*).

STATEMENT

In the taxable year 1960, Alan B. Kuper and Virginia A. Kuper ("taxpayers"), residents of Millburn, New Jersey, made a contribution of $100 to the Millburn League of Women Voters ("the Millburn League"). (Pet. A1.) The Commissioner determined that a substantial part of the activities of the Millburn League consisted of attempting to influence legislation, and disallowed the deduction of the gift. (Pet. A14.)

The Millburn League was organized in 1945 and was operated during the taxable year as a nonprofit organization. (Pet. A1.) An integral part of both the New Jersey League of Women Voters and the national League (Pet. A4), it was authorized by its bylaws to take action on local governmental measures

and policies in conformity with the principles of the State and national organizations. (Pet. A1–A2.).

The bylaws, method of operation, and activities of the Millburn, State, and national Leagues are described in detail in the Tax Court's findings (Pet. A1–A14), and are summarized in the opinion of the court of appeals (Pet. A18–A19). At the local, State, and national levels, the League studied issues and frequently took positions on them. After taking a position, the organization engaged in various activities to support it. Representatives of the national League often testified before Congressional committees urging the adoption of the League's views, and copies of this testimony were distributed to local leagues. The national office of the League would also follow the progress of various legislative items upon which the League had taken a position, and would send notices—termed "calls to action"—indicating the appropriate time for them to act in furtherance of the League's position. Upon receiving such "calls to action" the Millburn League would frequently send printed notices on the same subject to all of its members, urging them to write the appropriate members of Congress or government officials in support of the League's view.[1] (Pet. A6.) While the local leagues were under no duty to take such action, they were not free to oppose the stands taken by the national

[1] Similarly, the New Jersey League would notify local leagues of the time for action with respect to matters on which it had taken a position at the State level. The "calls to action" issued by the New Jersey League took much the same form as those issued by the national League. (Pet. A7.)

League. It was understood that if the State or national League adopted a position with respect to any issue which the Millburn League had studied, the latter would seek to influence legislation on behalf of that policy, except in those unusual cases in which the membership felt they could not support it. (Pet. A13–A14.)

Both the Tax Court and the court below decided that a substantial part of the activities of the Millburn League during the taxable year was attempting to influence legislation, and, accordingly, that the taxpayers were not entitled to a deduction for the gift. (Pet. A14–A17, A18–A19.)

ARGUMENT

The decision below is correct. There is no conflict or any other occasion for further review.

Section 170 (a) and (c) of the Internal Revenue Code of 1954 (Appendix, *infra*) authorizes, for federal income tax purposes, a deduction of contributions to a corporation "organized and operated exclusively for religious, charitable, scientific, literary or educational purposes * * *, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." Since the test of exclusively charitable or educational purposes by itself excludes organizations operated for private or selfish ends, the additional disqualification of organizations seeking to influence legislation cannot meaningfully be limited to those with selfish motivations. The policy, rather, is that the federal Treasury should remain neutral in political contro-

versies and that no attempt to influence legislation, whether worthy or unworthy, should be subsidized through tax advantages. As Judge Learned Hand stated in his opinion in *Slee* v. *Commissioner*, 42 F. 2d 184, 185 (C.A. 2d), quoted with approval in the opinion of this Court in *Cammarano* v. *United States*, 358 U.S. 498, 512:

> Political agitation as such is outside the statute, however innocent the aim * * *. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them.

The taxpayers do not deny that part of the activities of the Millburn League consisted of attempts to influence legislation. (Pet. 7) The sole question presented—and it is largely a factual question—is whether the legislative activities represented a "substantial" part of the organization's total activities. After a careful review of the evidence (Pet. A1–A14), the Tax Court concluded that the attempt to influence legislation did in fact constitute a substantial part of the League's activities during the taxable year (Pet. A15), and the court of appeals agreed (Pet. A19). The concurrent findings of the two courts below are plainly supported by the evidence and should not be disturbed. *Comstock* v. *Group of Investors*, 335 U.S. 211, 214; *Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 51.

That the activities of the Millburn League were also of educational value to its members does not detract from the fact that they were aimed in substantial measure at the enactment or defeat of proposed

legislation, and therefore clearly came within the meaning of the statute. See Treasury Regulations on Income Tax (1954 Code), Section 1.501(c)(3)-1(c)(3)(ii) (Appendix, *infra*, pp. 12–13).

The taxpayers argue (Pet. 7) that the court of appeals erred in taking into consideration the activities of the Millburn League in formulating, discussing and agreeing upon the positions to be taken with respect to various legislative measures, rather than merely the direct efforts to influence legislation, such as writing, telegraphing, or telephoning to representatives in Congress and the State legislature, and testifying before legislative committees. The Court of Claims in *League of Women Voters of U.S.* v. *United States*, 180 F. Supp. 379, certiorari denied, 364 U.S. 822, held that the time spent in formulating and agreeing upon the positions to be advocated is an essential part of the national League's legislative activity. It is immaterial that the instant case involves an integral constituent of the national League, rather than the national League itself. As the court below said in its opinion (Pet. A18–A19):

> The activities in question are an essential part of the general legislative program of the League to promote desirable governmental policies through legislation, direct political action being the end product.

Contrary to the taxpayers' contention, the decision below is not in conflict either with *Seasongood* v. *Commissioner*, 227 F. 2d 907 (C.A. 6) or with *Dulles* v. *Johnson*, 273 F. 2d 362 (C.A. 2), certiorari denied, 364 U.S. 834. (Pet. 14–17.) As the Tax Court

pointed out (Pet. A17), in *Dulles* bequests to three bar associations were held to be deductible on the basis of factors peculiar to those associations and not present here. The government petitioned for certiorari solely to protect its interests in the event that the taxpayers' petition was granted in *League of Women Voters of U.S. v. United States, supra*; neither petition was granted. The decision in *Seasongood* was predicated (p. 912) upon the factual determination that "less than 5% of the time and effort" of the educational organization was devoted to influencing legislation, whereas here the trial court found, and the court of appeals agreed, that the proportion of the League's activities which was devoted to attempts to influence legislation was substantial (Pet. A14, A15, A19).

The taxpayers also contend that the court of appeals erroneously declined to consider the effect of the applicable Treasury Regulations. (Pet. 9.) When the court of appeals observed (Pet. A19) that it saw no merit in the argument that the Tax Court's holding is at variance with applicable Treasury Regulations, it was referring to the contention advanced in the taxpayers' brief in the Court of Appeals, that the Millburn League was not an "action" organization under Section 1.501(c)(3)-1(c)(3)(iv) of Treasury Regulations on Income Tax (1954 Code) (Pet. 10-11, fn.). In making that argument, the taxpayers overlooked the fact that the regulation provided that an "action" organization could fall under any one of three classifications, namely, subdivisions (i), (ii) or (iv). The Commissioner contended that the Millburn League

was an "action" organization, not under subdivision (iv), *supra*, but under subdivision (ii). Furthermore, Section 1.501(c)(3)-1(c) of the Regulations (Appendix, *infra*, p. 12) expressly provides that an organization will not be regarded as operated exclusively for one or more exempt purposes "if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Since influencing legislation is not an exempt purpose, the Treasury Regulations are entirely consistent with the provisions of Section 170(c)(2) of the 1954 Code, which provides in effect that deduction of charitable contributions is allowed on the condition, *inter alia*, that no substantial part of the donee organization's activities is attempting to influence legislation.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

HARRY BAUM,
MORTON K. ROTHSCHILD,
Attorneys.

OCTOBER 1964.

APPENDIX

Internal Revenue Code of 1954:

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) ALLOWANCE OF DEDUCTION.—

(1) GENERAL RULE.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * * * *

(c) CHARITABLE CONTRIBUTION DEFINED.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

* * * * *

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State or Territory, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

* * * * *

[26 U.S.C., 1958 ed., Sec. 170.]

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.

* * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

* * * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

* * * * *

[26 U.S.C., 1958 ed., Sec. 501.]

Treasury Regulations on Income Tax (1954 Code):

§ 1.170–1 *Charitable, etc., contributions and gifts; allowance of deduction.*

(a) *General rule.* Any charitable contribution (as defined in section 170 (c)) actually paid during the taxable year is allowable as a deduction in computing taxable income, regardless of the method of accounting employed or when pledged. * * *

* * * * *

(f) *Exceptions.* * * *

(2) No deduction shall be allowed under section 170 for amounts paid to an organization—

(i) A substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or

(ii) Which participates in or intervenes in any political campaign on behalf of any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see section 501(c)(3) and the regulations thereunder. Moreover, no deduction shall be allowed under section 170 for expenditures for lobbying purposes, promotion or defeat of legislation, etc. See also the regulations under section 162.

* * * * *

[26 C.F.R., Sec. 1.170–1.]

§ 1.501(c)(3)–1 *Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

* * * * *

(b) *Organizational test*— * * *

* * * * *

(3) *Authorization of legislative or political activities.* An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it—

(i) To devote more than an insubstantial part of its activities to attempting to in-

fluence legislation by propaganda or otherwise; or

* * * * *

(iii) To have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c)(3) of this section.

The terms used in subdivisions (i), (ii), and (iii) of this subparagraph shall have the meanings provided in paragraph (c)(3) of this section.

* * * * *

(c) *Operational test*—(1) *Primary activities.* An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

* * * * *

(3) *"Action" organizations.* (i) An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(ii) An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization—

(*a*) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(*b*) Advocates the adoption or rejection of legislation.

The term "legislation", as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

* * * * *

[26 C.F.R., Sec. 1.501(c)(3)-1.]

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